Supreme Court, U.S.
FILED
04-610 OCT 17 2004
OFFICE OF THE CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

IN RE MICHAEL BEN GRAVES

ON PETITION FOR WRIT OF MANDAMUS TO

UNITED STATES APPEALS COURT FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF MANDAMUS

Michael Ben Graves, pro se
816 E. 101st Street
Los Angeles, California 90002
(323) 357-0244

QUESTIONS PRESENTED FOR REVIEW

1. Whether the United States Constitution and Bill of Rights, United States Supreme Court Rule 10, and/or self-enforcing statute 28 USC 455(a) require individual targetted federal-judges to (themselves) personally, directly, and timely respond to motion or request for self-recusal, to the individually targetted judge and about himself or herself, pursuant to statute 28 USC 455(a).

2. Whether a federal judge may fail and refuse to personally respond to a motion or request for self-recusal to such judge, about himself or herself, pursuant to self-enforcing statute 28 USC 455(a).

3. Whether the United States Constitution and Bill of Rights, and/or United States Supreme Court Rule 10, require federal judges to proceed in federal court cases with guidance and direction through, and in compliance with, Supreme Court Rlule 10.

4. Whether federal judges may fail and refuse a jury trial to pro se Graves.

5. Whether federal judges may fail and refuse due process to pro se Graves.

6. Whether federal judges may issue orders which violate the Separation of Powers doctrine.

7. Whether a federal judge may issue trial orders in a case in which said federal judge is not the assigned trial judge in the case.

8. Whether there is a conflict of interest and/or exists violations of the Separations of Powers doctrine including Central District U.S. Attorney Yang and staffers Weidman, Luymes, and Lester, with Central District Court judges and 9th Circuit Court judges.

LIST OF PARTIES

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceedings in the court whose judgment is the subject of this petition is as follows:

Petitioner

1. Petitioner is Michael Ben Graves. Petitioner is the pro se appellant and plaintiff in the actions described above, primarily related to 9th Circuit Court case number **04-55845** (but including related case numbers 04-56064, 04-55870, 04-55211, and 04-55138). The petitioner represents himself in pro per status:

Michael Ben Graves, pro se
816 E. 101st Street
Los Angeles, California 90002
(323) 357-0244

Respondents

1. Respondents are United States government agencies the EEOC, JRC, VA, and OFCCP, though 9th Circuit Court judges and the Court Clerk have "erased" defendant parties from the 9th Circuit Court records. The Respondents are appellees and defendants in the actions described above. The Respondents are represented by:

Solicitor General of the United States
Room 5614, Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530.

U.S. Attorney Yang and Asst. U.S. Attorneys
Lester, Luymes, and Weidman;
Room 7516, Federal Building
300 N. Los Angeles Street
Los Angeles, California 90012.

2. Respondent is U.S. government contractor AdvanceMed/DynCorp, divisions of government contractor Control Data Corporation (CDC). The Respondent is an appellee and defendant in the actions described above. The Respondent is represented by:

Patrick Cain and "Rodi-Pollock"
444 S. Flower, Suite 1700
Los Angeles, California 90071

Other Respondents

1. Respondents are District Court Judges Gary Feess, Percy Anderson, and John Walter, and Magistrate Charles Eick; and U.S. government officials and attorneys Attorney General John Ashcroft, U.S. Attorney Debra Yang and staffers Asst. U.S. Attorneys Weidman, Luymes, and Lester; and the EEOC's Stephanie Garner and the VA's Joseph Vallowe. The Respondents are

appellees and defendant in related cases. The Respondents are represented by:

U.S. Attorney Yang and Asst. U.S. Attorneys
Lester, Luymes, and Weidman;
Room 7516, Federal Building
300 N. Los Angeles Street
Los Angeles, California 90012

IT SHOULD BE NOTED HERE THAT THERE IS GROSS CONFLICT OF INTEREST AND VIOLATIONS OF THE SEPARATION OF POWERS DOCTRINE INVOLVING THE RESPONDENTS ABOVE. DETAILS FOLLOW WITHIN THE PRESENT DOCUMENT.

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Relevant Statutory Provisions

1. The Supreme Court has jurisdiction and authority to handle the present Petition for Writ of Mandamus under United States Constitution Article III and statute 28 USC 1651(a).

2. The Supreme Court has jurisdiction and authority to handle the present Petition for Writ of Mandamus under Supreme Court Rules 10 and 20.

3. The Supreme Court has jurisdiction and authority to handle the present Petition for Writ of Mandamus regarding statute 28 USC 455(a) under United States Constitution Article III and through Supreme Court Rule 10. See *Union Carbide Corp. v. U.S. Cutting Service, Inc.*, 782 F.2d 710 (7th Cir. 1986) at 712. See *In re International Business Machines Corp.*

4. The Supreme Court has jurisdiction and authority to handle the present Petition for Writ of Mandamus through the oath of all judges and justices to uphold the United States Constitution, pursuant to Constitution Article VI.

Constitutional Provisions

1. United States Constitution states that the lower or lesser courts have limited jurisdiction as specified by Constitution Article III and as ordained and established by the Congress.

2. The United States Supreme Court provides guidance and direction to the inferior courts, under the authority of Article III and through Supra Rule 10.

Prior related lower court actions

1. For nearly two years continuously, pro se Graves properly and repeatedly submitted motions and/or requests for self-recusal separately to federal judges in both the District Court and in the 9th Circuit Court, pursuant to self-enforcing statute 28 USC 455(a). The District Court judges failed and refused to comply with the statute and continued to fail and refuse to accord pro se Graves either due process or the required jury trial. The individually targetted 9th Circuit Court judges simply failed and refused even to respond to motions for self-recusal, either regarding themselves or regarding lower court judges and violations of Constitution Amendments V and VII. The 9th Circuit judges also rejected without explanation pro se Graves' properly filed follow-up Petitions for Writ of Mandamus regarding the Distrtict Court judges failure to comply with self-enforcing statute 28 USC 455(a).

2. Throughout the present case and related cases continuously, the judges in both the District Court and the 9th Circuit Court failed absolutely even to address pro se Graves'

charges and complaints of judges and defendant attorneys flagrantly violating Constitution Articles III and VI and Amendments V and VII, as well as violations of specified U.S. statutes including Title VII.

3. The district court and 9th Circuit court judges dismissed all related cases while absolutely failing and refusing required hearings, discovery, or direction from the Congress and the Supreme Court through Constitution Article III and Supra Rule 10.

4. Based on the above, further pleas or motions to the Appeals Court regarding the above identified matters in the present or related case would be futile and counter-productive. Indeed, the Appeals Court judges in all of the related cases, including the present case, state in advance in any and all orders in the related cases that they refuse any subsequent motions from pro se Graves, not only for "reconsideration, rehearing, etc." but as well for "clarification, stay of orders, etc.".

Supreme Court Rule 14

1. Attached as "Appendix A" are the district court judgments in the present case which are presently under appeal to the 9th Circuit Court. Attached as "Appendix B" is the 9th Circuit Court Order issued by Circuit Judges T.G. Nelson and Graber, filed

September 16, 2004, in the present case. All related cases were handled identically or similarly by 9th Circuit Court Judges Nelson, Graber and other judges as a conspiracy against pro se Graves. In the present order (appendix B) Judges Nelson and Graber unlawfully deny without explanation on page#1 para#1 the previously filed motions and/or requests for self-recusal specifically to each Circuit Judge Leavy, Thomas, and Fisher, about Judges Leavy, Thomas, and Fisher, pursuant to self-enforcing statute 28 USC 455(a), though Neither Judge T.G. Nelson and Graber had

Statement of the Case

1. Nearly three years ago pro se Graves reported to the VA's Joseph Vallowe and his staff and superiors fraud by Graves' then employer government contractor AdvanceMed/DynCorp against the VA. Graves also reported retaliation perpetrated against him by his employer subsequent to Graves reporting the fraud to the VA. However, the VA covered up this matter, with the VA's Joseph Vallowe falsely claiming that he was unable to provide any related documents requested by Graves under the FOIA because the company AdvanceMed and/or DynCorp did not then have, nor had it ever had, any contracts with the VA.

2. Nearly three years ago pro se Graves reported to the EEOC his then employer government contractor AdvanceMed/DynCorp gender discrimination against Graves and retaliation perpetrated against Graves for reporting the discrimination and as well for reporting the fraud against the VA.

3. Immediately after the above, i.e. in February, 2002, government contractor AdvanceMed/ DynCorp terminated Graves' employment and alleged that it was "leaving the coding business".

4. Throughout 2002 the EEOC and the VA gave Graves the run-a-round and dismissed his complaints of discrimination, fraud, and retaliation, while failing and refusing to produce related documents which Graves properly requested under the FOIA. The OFCCP and JRC also failed and refused to comply with the FOIA. Indeed, it is most significant that the EEOC failed and refused to produce documents entitled EEO-1 Reports for government contractor AdvanceMed/DynCorp requested under the FOIA, though Title VII Civil Rights Act of 1964 (amended) with EO11246 and 41 CFR 60-40 specifically states that the EEOC shall not deny FOIA Requests for any government contractor EEO-1

Reports. Accordingly, Graves filed lawsuits against government agencies the EEOC, JRC, VA, and OFCCP and government contractor AdvanceMed/DynCorp regarding the various cases of discrimination, retaliation, "whistleblower", etc. Graves demanded a jury trial regarding the relevant cases.

5. For nearly two years trial Judge Gary Feess gave pro se Graves the run-a-round regarding each and all of the cases. Assigned discovery Magistrate Charles Eick exploited and took advantage of pro se Graves primarily by (a) refusing any and all discovery hearings prior to discovery cut-off date, (b) issuing an order which unlawfully "excempted" all defendant federal agencies from compliance with FRCP 33(a) and (b)(1) requirement to respond to interrogatories, including mandatory discovery data under FRCP 26(a) and 26(b), through a designated officer or agent and under oath, and (c) accepting as "acceptable" evidence from defendant AdvanceMed/ DynCorp attorney Patrick Cain known forged and fraudulant documents, and (d) outright insulting and taking advantage of pro se Graves. Indeed, Graves never met Magistrate Eick over the many months of alleged "discovery" proceedings. Trial Judge Gary Feess reiterated and supported all of the unlawful actions by Magistrate Eick, granted summary judgment for the EEOC, JRC,

OFCCP, and VA without FRCP 33 discovery, including an order which unlawfully directed the EEOC to deny FOIA Request for government contractor AdvanceMed/DynCorp EEO-1 Reports. Judge Feess and Judge Lourdes Baird violated and circumvented self-enforcing motion for self-recusal to Judge Feess about Judge Feess by having Judge Baird "handle" the matter under a different statute 28 USC 144, though Judge Baird had no jurisdiction to do so. Judge Feess issued a "bogus" final order in favor of defendant AdvanceMed/DynCorp to dismiss all claims under summary judgment, yet proceeded instead to dismiss the case as in fact a trial by judge without the required jury. Judge Feess then issued an order charging pro se Graves thousands of dollars for an earlier hearing which Judge Feess ordered Graves to attend, the same hearing in which attorney Patrick Cain submitted the forged and fraudulant documents. The 9th Circuit Court then dismissed Graves attempts to appeal the bogus final judgment, at additional thousands of dollars in costs and months of time to Graves. However, Judge Feess failed and refused to delete the thousands of dollars in charges against pro se Graves.

6. Pro se Graves filed additional related lawsuits against trial Judge Feess, Magistrate Eick, and John Ashcroft, Debra Yang, Leon Weidman, Robert Lester, Stephanie Garner,

Joseph Vallowe, Patrick Cain, and "Rosenthal and Smith". These cases were all assigned to Judge Percy Anderson. However, Judge Anderson simply gave pro se Graves the run-a-round before dismissing any and all of the case under FRCP 12(b)(6) with prejudice, while failing and refusing to accord to pro se Graves the required FRCP 12(d) hearing pursuant to Constitution Amendment V or the jury trial in one case pursuant to Constitution Amendment VII or to permit pro se Graves to amend his claims pursuant to FRCP 15(a). In one case, trial Judge Anderson directed Judge John Walter to dismiss Graves' previously submitted amended Complaint, though Judge Walter was not the trial judge. Judges Anderson and Walter joined together as a conspiracy to violate and circumvent the motions and/or requests for self-recusal to Judge Anderson about Judge Anderson by unlawfully handling" the matter under different statute 28 USC 144.

7. Pro se Graves filed additional related lawsuitagainst Judges Feess, Anderson, and Walter regarding the above misconduct. The case was assigned for hearing to trial Judge Audrey Collins. Judge Collins simply gave pro se Graves the run-a-round, then dismissed any and all charges under FRCP 12(b)(6) with prejudice, while failing and refusing to accord pro se Graves the required FRCP 12(d) hearing pursuant to Constitution Amend. V.

8. There was and remains a conflict of interest and flagrant violations of the Constitution's Separation of Powers doctrine involving defendant attorneys Central District U.S. Attorney Debra Yang and staffers Weidman, Luymes, and Lester in all of the related cases involving Judges Feess, Collins Anderson, and Walter. At times, the defendant attorneys defended federal agencies before Judge Feess and Magistrate Eick, at other times the attorneys were themselves defendants before Judge Anderson, at other times the attorneys defended Judge Anderson before Judge Collins, and at other times the attorneys represented themselves and all of the above before the same partial 9th Circuit Judges. Each and all judges, and each and all attorneys, failed and refused even to discuss this impropriety and unlawful group of situations to the present inclusive.

9. The 9th Circuit Judges dismissed all of the related cases, and issued the enclosed similar orders to dispose of the different cases. Although CR 3-6 requires pro se Graves to have the opportunity to "show cause", the judges dismissed entire cases based on this Rule while failing and refusing to accord pro se Graves the right to show cause. Although FRAP 34(a)(2) require the judges to review all briefs prior to dismissing the case under this rule, the judges dismissed entire cases under FRAP 34(a)(2) while failing and refusing to

require defendants to file their required briefs in response to pro se Graves' already filed brief in each case. Although FRAP 34(a)(2) disallows dismissal of the cases under this rule without a hearing for the reason "insubstantial questions", the judges dismissed entire cases for "insubstantial questions" without a hearing, under FRAP 34(a)(2). In each of the dismissal orders in each of the cases, the judges included an in advance refusal of any subsequent filings by pro se Graves, including any motion for clarification of the ambiguous orders or any motion or request for self-recusal to any judge under self-enforcing statute 28 USC 455(a). Indeed, each judge failed and refused even to respond to the motion for self-recusal and the Court Clerk and staff failed and refused even to respond regarding whether the motion or request was delivered to the judges. In one related case, defendant Judge Schroeder and other 9th Circuit judges secretly dismissed the entire case based on the defendants' alleged motion for summary affirmance, though the defendants, the judges themselves, and the Court Clerk and staff continue to the present inclusive to serve a copy of the alleged summary affirmance motion papers to pro se Graves. That is, the case was dismissed even though pro se Graves never saw the motion papers, to the present inclusive.

10. The Circuit judges in the present case, with the Court Clerk, attempted to derail the

present case by secretly "deleting" and "erasing" two defendant parties, i.e. the OFCCP and AdvanceMed/ DynCorp, from 9th Circuit Court records. Appendix B shows Judges Nelson and Graber using legal and judicial trickery to allegely "add" the defendant OFFCCP back to the case after it was erased, while simultaneously "erasing" defendant JRC from 9th Circuit Court records. The judges finally "accepted" that the defendants must file their required brief, afterwhcih the defendants filed bogus briefs which failed to address any of the questions or issues submitted for review in the appeal in pro se Graves' already filed brief. Accordingly filed motions to strike each and all defendants' briefs. Each and all defendants failed to timely file their opposition to the motions, yet the judges rejected pro se Graves' motion to strike without explanation, and refusing in advance any attempt by pro se Graves to file motions for clarification of the ambiguous orders.

Arguments

1. The district court judges violated and unlawfully circumvented self-enforcing statute 28 USC 455(a) by "handling" the matter through a different judge and under different statute 28 USC 144. Therefore, the judges violated Constitution Articles III and VI as well as the statute itself.

2. The 9th Circuit court judges violated and unlawfully circumvented self-enforcing statute 28 USC 455(a) by failing and refusing even to respond to the self-enforcing statute. Therefore, the judges violated Constitution Articles III and VI as well as the statute itself.

3. There was no proper "summary judgment" dismissal of the present case; therefore, Judge Feess deprived pro se Graves of the required jury trial pursuant to Constitution Amendment VII. Accordingly, Judge Feess also violated Constitution Articles III and VI.

4. Judge Feess violated the Separation of Powers doctrine by issuing an order to the EEOC to deny FOIA Requests for government contractor EEO-1 Reports, thus usurping the power of the Congress to make laws and the President to enforce laws or administrate government contracts and contractors.

5. Each and all district court judges in the present and related cases departed far from the accepted and usual course of judicial proceedings, and as well decided Constitution and other important federal questions in ways that conflict with relevant decisions of the Supreme Court.

6. Each Circuit Court judge in the present and related cases departed far from the

accepted and usual course of judicial proceedings, sanctioned such departure by the district court judges in the present and related cases, and decided Constitution and other important federal questions in ways that conflict with relevant decisions of the Supreme Court.

Exceptional Circumstances

1. Exceptional circumstances warrant the excercise of the the Court's discretionary powers because each and all presented issues above comprise upholding the United States, its Constitution and Bill of Rights, and protections for the American people.

Proposed Disposition

1. **Relief is southg against:**

Trial Judges Gary Feess and Audrey Collins.

Distrtict Court Judges Lourdes Baird and John Walter.

9th Circuit Judges Leavy, Thomas, Fisher, Nelson, Graber, O'Scannlain, Rymer, Bea, Schroeder.

9th Circuit Judicial Council.

All defendants identified as respondents.

2. Based on the above, pro se Graves respectfully requests the Court to disqualify each and all judges in the lower courts who handled or were assigned to the present and related cases. Each and all orders and/or judgments by any of the judges in the present and related cases should be immediately voided.

3. Based on the above, pro se Graves respectfully requests the Court to order a new jury trial in the district court, with a new judge and discovery magistrate. Each defendant should be ordered to immediately produce all information and documents requested in the present and related cases within 20 days after the order, pursuant to FRCP 33(a) and 33(b)(1) through designated officers or agents and under oath, and FRCP 26(a), 26(b), and 34. The jury trial should be ordered to commence within 30 days after delivery of all defendant discovery documents to pro se Graves.

Respectfully Submitted,

Michael B. Graves

Michael B. Graves, pro se

October 29, 2004

Entered April 15, 2004
Central District of California

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

Michael Ben Graves, Plaintiff v. U.S. EEOC, OFCCP, JRC, VA, ADVANCEMED/ DYNCORP, Defendants.	CV-02-6842-GAF (Ex) Judgment

The motions to dismiss brought by defenfdants Equal Employment Opportunity Commission ("EEOC") and Joint Reporting Committee ("JRC") as to all claims brought by plaintiff against them (except the plaintiff's claims brought under Freedom of Information Act) were previously granted in those

defendants' favor by order filed January 10, 2004 (Clerk's Record 123). The Motions to dismiss brought by defendants Department of Veterans Affairs ("VA") and the Office of Federal Contracts Compliance Programs ("OFCCP") as to all claims brought by plaintiff against them (except the plaintiff's claims brought under the Freedom of Information Act) were previously granted in those defendants' favor by Orders filed February 10, 2003, March 10, 2003, and March 25, 2003 (Clerk's Record 148, 172, and 182).

The motions for summary judgment brought by defendants EEOC and JRC as to claims brought by plaintiff under the Freedom of Information Act were previously granted in those defendants' favor by Order filed April 4, 2003 (Clerk's Record 193). The motions for summary judgment brought by defendant VA as to claims brought against it by plaintiff under the Freedom of Information Act were previously granted in the VA's favor by Order filed July 1, 2003 and March 26, 2004 (Clerk's Record 291 and 526). The motion for summary judgment brought by defendant OFCCP as to claims brought against it by plaintiff under the Freedom of Information Act was previously granted in the OFCCP's favor by Order filed March 26, 2004 (Clerk's Record 525). Having adjudicated all of the claims brought by plaintiff against defendants EEOC, JRC, VA, and OFCCP.

It is hereby ordered and adjudged that judgment is entered in favor of defendants EEOC, JRC, VA, and OFCCP, and against the plaintiff on all claims brought against them, and plaintiff's action against defendants EEOC, JRC, VA, and OFCCP is dismissed with prejudice. Costs are taxed against plaintiff and in favor of federal defendants EEOC, JRC, VA, and OFCCP in the amount of $_____.

Having also granted judgment in favor of defendants AdvanceMed and DynCorp by judgment entered on December 17, 2003 (Clerk's Record 454), the Court further orders and adjudges that this instant judgment is a final judgment as to all claims brought by plaintiff against all defendants in this action.

DATED: This 12th day of April, 2004.

Gary Feess (signature)

United States District Judge

Entered December 17, 2003
Central District of California

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

Michael Ben Graves, Plaintiff v. U.S. EEOC, OFCCP, JRC, VA, ADVANCEMED/ DYNCORP, Defendants.	CV-02-6842-GAF (Ex) Judgment

The motion for summary judgment by defendants DynCorp and AdvanceMed Corporation came on for hearing before this Court on November 24, 2003, at 9:30 a.m. The Court, having considered all the materials filed in support of and in opposition to the motion, having heard oral argument, and having thereafter issued its Memorandum and

Order Regarding AdvanceMed/DynCorp's Motion for Summary Judgment,

IT IS ORDERED AND ADJUDGED that plaintiff Michael Ben Graves take nothing by reason of his claims against AdvanceMed/ and DynCorp, that the action be dismissed on its merits as against defendants AdvanceMed and DynCorp and that AdvanceMed and DynCorp recover costs in the amount of

_____

At Los Angeles, California, this 15th day of December, 2003,

Hon. Gary A. Feess (signature)

United States District Court Judge

Filed Sept. 16, 2004
U.S. Court of Appeals

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Michael Ben Graves	No. 04-55845
plaintiff/appellant	D.C. CV-02-06842
v.	Order
EEOC, et al.,	
defendants/appellees	

Before: T.G. Nelson and Graber, Circuit Judges

Appellant's motions for reconsideration and motions to disqualify Circuit Judges Leavy, Thomas, and Fisher are denied.

As this court ordered on June 25, 2004, no motions for reconsideration, clarification, or modification of the denial of appellant's motions shall be filed or entertained.

Appellant's motion for judicial notice of constitional matters is denied. No motions for reconsideration of this denial will be filed or

entertained.

Appellants' motion to correct the docket to include the U.S. Office of Federal Contracts Compliance Programs, OFCCP JRC is granted. The Clerk shall replace the Joint Reporting Committee with the U.S. Office of Federal Contracts Compliance Programs, OFCCP JRC. Appellant's motion to add AdvancedMed/ DynCorp is denied as unnecessary because that party appears on this court's docket.

The opening brief was filed on June 4, 2004. The answering brief is due 30 days from the filing date of this order. The optional reply brief is due 14 days from the filing of the answering brief.